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ABSTRACT

Recommendations for changes to the Individuals with Disabilities Education Act (IDEA) are offered by the National Association of State Directors of Special Education. Definitions of terms used in the legislation are provided. The following provisions are covered: regulation requirements/negotiated rulemaking, flexible funding, content of state plans, local application, maintenance of effort, procedural safeguards, monitoring standards, a developmental delay category, age extension for preschool grants, regional resource and federal centers, programs for children with severe disabilities, postsecondary education, secondary education and transitional services, programs for children with serious emotional disturbance and pilot programming for the hearing impaired, grants for personnel training, grants to State Education Agencies and institutions for traineeships, clearinghouses, research and demonstration projects for dealing with children in a range of settings, and schoolwide programs. In addition, general recommendations are offered regarding: full funding of IDEA, deletion of references to "disability category," triennial evaluations, and a protection and advocacy system. (SW)

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ED 389 124

RECOMMENDATIONS FOR THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

THE NATIONAL ASSOCIATION OF
STATE DIRECTORS OF SPECIAL EDUCATION

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INTRODUCTION

The National Association of State Directors of Special Education (NASDSE) began the process of identifying issues for the reauthorization of the Individuals with Disabilities Education Act (IDEA) in the fall of 1993. At the NASDSE Annual Meeting held in Little Rock, Arkansas, State directors shared their concerns in a hearing on the reauthorization and participated in small group discussions to further define the issues. Other items were also submitted in writing.

After that meeting, the issues and concerns were distilled into an 18-point paper which represented the first recommendations of the organization. In April 1994 David Stockford, president of the organization, presented those recommendations in testimony before the House Subcommittee on Select Education and Civil Rights.

Since that time, the organization has continued to receive input, discuss, and refine its recommendations. The result of those efforts is this comprehensive review of the IDEA, incorporating changes that will update and strengthen the existing law. These proposed changes were developed based on four basic principles:

- The reauthorization of the IDEA should link that Act with education reform and should focus on the educational results for children and youth with disabilities;

- The adversarial and litigious atmosphere currently surrounding the implementation of the IDEA should be reduced;

- The IDEA should reflect an increasingly diverse society and the negative consequences of children and families living in poverty; and,

- The principles mandated under the IDEA of a "free appropriate public education, including procedural safeguards, must be maintained.

NASDSE believes that the IDEA, when fully implemented with the following proposed amendments, will provide a solid framework for the provision of quality education for all children and youth with disabilities in a reformed education system.

RECOMMENDATIONS FOR THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

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Sec. 1400. CONGRESSIONAL STATEMENTS AND DECLARATIONS.

1400(b). Findings.

The Congress finds that --

(1) there are more than eight million children and youth with disabilities in the United States today;

(2) there are more than five million children and youth with disabilities, 3-21, being served;

(3) during the last twenty years, much progress has been made toward improving accessibility to and delivery of special education programs and services;

(4) the provision of an appropriate education, including special education services as needed, is essential to preparing children and youth with disabilities to be active and productive members of society;

(5) with the proper supports, children and youth with disabilities can achieve at significantly higher levels;

(6) there is a continuing need to address issues related to the availability of adequately trained special education and related services personnel;

(7) emphasis should be placed on preparing general education personnel to meet the needs of children and youth with disabilities;

(8) parent participation is an important component in the education of children and youth with disabilities;

(9) children and youth with disabilities drop out of school in disproportionate numbers to their nondisabled peers;

(10) it is in the national interest that children and youth with disabilities be given equal access to educational curriculum, programs, and services available to their nondisabled peers; and,

(11) it is in the national interest that children and youth with disabilities exit school with the skills necessary to be included and integrated in the economic and social fabric of society and to live independently.

1400(c). Purpose. It is the purpose of this chapter to assure that all children and youth with disabilities have available to them [within the time periods specified...this title] a free appropriate public education which [emphasizes special education and related services] includes appropriate special education services and supports to meet their unique needs, to assure that the rights of children and youth with disabilities and their parents or guardians are protected, to assist States and localities to provide for the education of all children and youth with disabilities, and to assess and assure the effectiveness of efforts to educate children and youth with disabilities, resulting in their progress to meet high performance standards.

RATIONALE: The Findings and Purposes sections represent the basis and foundation for the Act. The proposed changes reflect the evolution in thinking regarding the abilities of children and youth with disabilities, the responsibility of the general community for ensuring equal educational opportunity, and some of the problems still to be addressed.

Sec. 1401. DEFINITIONS.

1401(a)(1)(B) [children with disabilities]: Amend to read "The term 'children with disabilities' for children aged 3 to 8, inclusive, may at a State's discretion, include children...services.

RATIONALE: Categorization by diagnosis is inappropriate for most children in the early childhood years, i.e., through age eight. Rather, the focus should be on effective early intervention, which often alleviates or eliminates the need for more intensive special education supports later on.

1401(a)(16) [special education]: Amend to read "The term 'special education' means specially designed instruction, including services and supports,...including --
(A) [instruction] supports and services provided in the classroom...and
(B) [instruction] supports and services in physical education.

RATIONALE: As children and youth with disabilities are more fully included in general education programs, appropriate supports and services must be provided. Special education can no longer be viewed as solely an instructional placement, but rather must include services and supports designed to allow the student to receive the full benefit of instruction regardless of the setting in which the instruction is delivered.

1401(a)(17) [related services]: Amend to read "The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech pathology...physical and occupational therapy, orientation and mobility instruction,...children."

RATIONALE: Orientation and mobility instruction is a specialized service which does not come under the aegis of any of the other related services listed. It is an important and integral part of the educational process for children who are blind or visually impaired.

1401(a)(19) [transition services]: Amend to read "The term 'transition services' means a coordinated set of activities that are individually designed for a student [designed within an outcome-oriented process] and [promotes] enable continuity in movement from school to appropriate post-school activities, including...community participation. The coordinated set of activities shall be based upon the student's needs [taking into account the student's], preferences and interests and shall include...vocational evaluation. Such services shall be initiated no later than age 16."

> **RATIONALE:** Emphasis should be placed on ensuring that appropriate individualized transition planning is initiated, which will give students with disabilities additional incentive to remain in school. That translates, in turn, to having the opportunity to develop the necessary skills to find meaningful employment and live independently after exiting the school system.

1401(a)(20) [individualized education program]: Amend to read "a written statement for each child or youth with a disability developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction including supports and services,...which statement shall include...."

> **RATIONALE:** As children and youth with disabilities are more fully included in regular education programs, appropriate supports and services must be provided. Those supports and services should be reflected in the individualized education program (IEP).

1401(a)(20)(C): Amend to read "a statement of the specific educational services to be provided to such child or youth, and the extent to which such child or youth will be unable to participate in [regular] general educational programs."

> **RATIONALE:** The current wording suggests that the IEP team must justify the student's participation in the general education setting. Use of the word "unable" in this statement provides an assumption in favor of including students with disabilities in the general education program.

1401(a)(25) [assistive technology device]: Amend to read "The term 'assistive technology device'...with disabilities. Commonly considered personal devices such as hearing aids, corrective lenses, crutches, wheelchairs, and other devices needed regardless of the provision of special education shall not be considered assistive technology devices under this title. Funds distributed under subchapter II of this Act

may be used to purchase personal devices at the discretion of the State if other funds are not available, pursuant to sec. 1413(e) of this title."

RATIONALE: This addition clarifies that such personal devices are necessary for generally improved functioning beyond the educational relevancy. Assistive technology devices are only required if it is determined, through the IEP process, to be special education, a related service, or a supplementary aid or service required to enable a child to be educated in the least restrictive environment.

ADD new definition - 1401(a)(28): "The term 'substantially approvable' as applied to the State plan, section 1413 of this title, means a State plan addressing all requirements specified in section 1413 of this title in a manner sufficient to meet the intent of the Act and in sufficient form to trigger obligation of funds as specified in the Education Department General Administration Regulations [34 C.F.R. 76.703]."

RATIONALE: In accordance with recent policy directives concerning the Cash Management Improvement Act (CMIA) (*See* OSEP Memoranda 93-16, 94-9), States may not obligate Part B funds until the later of either the date that the State plan is delivered to the Secretary in "substantially approvable" form or the date the funds are first available for obligation by the Secretary. The term "substantially approvable" is not defined in law or regulation and has caused a great deal of confusion for both the State Directors and the Department.

NASDSE believes that grant awards should not be delayed while decisions are made regarding process. Withholding payment will often mean delay in provision of needed services. *See also,* new provision added under section 1413.

ADD new definition - 1401(a)(29): "The term 'supplementary aids and services' means adjunct services provided in and as part of the general educational program which enable children and youth with disabilities to receive special education and related services in the general education setting."

RATIONALE: The addition of this definition clarifies and emphasizes that children and youth with disabilities must be served in the least restrictive environment with appropriate aids and supports. If the least restrictive environment is the general education classroom, those aids and supports must

be provided in that setting and in a manner that enhances educational performance and results.

ADD new definition - 1401(a)(30): "The term 'suspension' means a temporary removal of a child or youth from the current educational placement for a specified period of time."

ADD new definition - 1401(a)(31): "The term 'expulsion' means a permanent removal of a child or youth from the current educational placement unless the local educational agency reinstates that student."

RATIONALE: These definitions are added to conform with the proposed addition of a requirement under section 1413 that States have in place policies and procedures addressing the disciplining of children and youth with disabilities.

ADD new definition - 1401(a)(32): "The term 'regulation' means any rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed by the Secretary as defined under the General Education Provisions Act [20 U.S.C. 1232]."

RATIONALE: *See* new sec. 1407(a) below.

Sec. 1407. REGULATION REQUIREMENTS.

ADD new sec. 1407(a) and re-letter current (a) and (b):

(a) *Negotiated Rulemaking*

(1) Prior to publishing in the Federal Register proposed regulations to carry out this title, the Secretary shall obtain the advice and recommendations of representatives of federal, State, and local administrators, parents, teachers, and members of local boards of education involved with the implementation and operation of programs under this title.

(2) Such advice and recommendations may be obtained through such mechanisms as regional meetings and electronic exchanges of information.

(3) In an emergency situation in which regulations to carry out this title must be issued with a very limited time to assist State and local educational agencies with the operation of a program under this title, the Secretary may issue proposed regulations without following such process but shall, immediately thereafter and prior

to issuing final regulations, conduct regional meetings to review such proposed regulations.

(4) No other less formal method of implementing the provisions of this title is authorized."

RATIONALE: The Office of Special Education Programs issues letters of interpretation in response to inquiries regarding the IDEA statute and regulations. The issuance of these letters has proved problematic for State educational agencies (SEA) because, in some cases, States are being monitored against interpretive letters and occasionally are being forced to codify these interpretations in State statute.

The letters are not widely or consistently disseminated, nor do these interpretations conform with the GEPA requirement that they be published in the Federal Register with opportunity for public comment. There is no quarrel with the Department issuing a letter clarifying statute or regulation unless it becomes a monitoring criterion. When that occurs, however, the "guideline" or "interpretation" should be subjected to the normal regulatory process.

Sec. 1411. ENTITLEMENTS AND ALLOCATIONS.

ADD new sec. 1411(c)(1)(C): "Notwithstanding sec. 1414(a)(2)(B)(i) of this title, an amount equal to 10 per centum of the total amount of funds received from the State pursuant to this subsection may be used in conjunction with funds from other federal or State categorical programs on an intra-agency or interagency basis to provide noncategorical supports and services for children and youth with disabilities."

RATIONALE: This language gives local educational agencies the flexibility to combine program dollars to provide necessary supports and services, while avoiding duplication of effort and improving results for students.

The intention is that this language be added to other education acts as they are reauthorized, so that there will be a bridge between IDEA and other federal programs.

1411(c)(2)(B) [Distribution and Use of Grant Funds]: After "other than Federal funds..." add "except funds provided under the Goals 2000: Educate America Act [20 U.S.C. 5801 et seq.]..."

RATIONALE: Allowing the use of Goals 2000 funds provides an incentive for coordination of statewide services.

Sec. 1413. STATE PLANS.

1413(a)(1) [Requisite features]: After "paid to the State under this subchapter" add "and subchapter IV sections 1431(a)(4) and 1432..."

RATIONALE: NASDSE believes that the comprehensive system of personnel development (CSPD) should be based on State needs and that the State plan and the CSPD plan should be combined. The intention in adding this language is to allow funds to flow for CSPD based only on the approval of the State plan.

ADD new sec. 1413(a)(2) and renumber subparagraphs (2) through (15): "In cases where language of State policies and procedures is identical to language in this title, States may submit statements of assurance regarding those policies and procedures to comply with subparagraph (a)(1) of this section."

RATIONALE: The addition of 1413(a)(2) will relieve States of the necessity of copying into State plans language that is identical to federal statute, e.g., the components of the IEP.

1413(a)(3)(A)(i): Amend to read, "By methods determined by the Secretary and based on demonstrable needs identified by the States, the development and maintenance of a system for determining, on an annual basis --...."

RATIONALE: This change will allow the Secretary to select and require the use of a common means for determining personnel needs, thus basing competition for training funds on a common definition of "need."

1413(a)(3)(A)(i)(I): Delete "by area of specialization."

> **RATIONALE:** By deleting this phrase, States will report only on two broad categories -- special education teachers and related services personnel. Eliminating reporting by specialization will decrease the emphasis on disability categories.
>
> NASDSE also recommends that "emergency, provisional, or other basis" be defined in the accompanying regulations. These terms are general and are subject to broad interpretation.

INCORPORATE sec. 1413(a)(3)(A)(iii)(II) into sec. 1413(a)(3): Sec. 1413(a)(3) will read: "describe, consistent with the purposes of this chapter and with the comprehensive system of personnel development described in section 1476(b)(8) of this title, a comprehensive system of personnel development that coordinates and facilitates efforts....and personnel with disabilities and that shall include --...."

> **RATIONALE:** This change highlights closer coordination of efforts among State and local educational agencies (LEA), institutions of higher education (IHE), and professional associations. This collaboration will enhance the ability of SEAs to address systemic needs and to link personnel preparation grants to States' needs.

1413(a)(12)(C): Amend to read "assists the State in developing and reporting such data and evaluations...this title, including, for States having State-determined performance standards, data on the progress of children and youth with disabilities in meeting those standards."

> **RATIONALE:** Goals 2000: Educate America Act states that all children and all students must be included in State performance standards and assessments. Accountability for the results of including children and youth with disabilities must be a part of regular reporting by the Secretary of Education.

ADD new sec. 1413(a)(12)(D): "for states participating in the Goals 2000: Educate America Act, advises the State educational agency on the participation of children and youth with disabilities and their families and teachers in activities undertaken by the State pursuant to that Act."

RATIONALE: Goals 2000: Educate America Act states that all children and all students are to be a part of any efforts to reform the education system. The State advisory panel, which has the responsibility of advising the SEA regarding unmet needs, should expand its mandate to include information on the extent to which children and youth with disabilities are being included in overall education reform.

1413(a)(14): Amend to read "set forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this subchapter are appropriately and adequately prepared and trained [**DELETE** ", including" and subparagraphs (A) and (B)]."

RATIONALE: Personnel standards are a State issue. The subparagraphs proposed for deletion inhibit a State from developing the standards that it feels are appropriate to its own needs. Further, leaving these policy decisions to the State is consistent with Goals 2000, in which States are given the responsibility for developing the capability of teachers to provide high-quality instruction.

ADD new sec. 1413(a)(17) after renumbered sec. 1413(a)(16): "set forth policies and procedures relating to the suspension and expulsion of children and youth with disabilities, addressing --

(A) short-term suspensions of up to ten days;
(B) long-term suspensions exceeding ten days;
(C) short-term suspensions in which the cumulative total exceeds ten days per school year;
(D) expulsion;
(E) appropriate due process procedures;
(F) the determination of the causal connection between the behavior exhibited and the disability of the child or youth, for purposes of subparagraphs (B)-(D);
(G) immediate removal from the current educational placement of children and youth who are endangering themselves or others;
(H) those children and youth with disabilities bringing firearms, as such term is used in section 921 of title 18, United States Code, onto school property;
(I) determination by an independent hearing officer, based on a review of the record, of the appropriateness of immediate removal if a parent or guardian objects to that removal; and
(J) provision of special education services during removal in excess of ten days from the current educational placement.

RATIONALE: The recent amendment to the IDEA, enacted under the reauthorization of the Elementary and Secondary Education Act, as well as the Gun-Free Schools provision of that same Act have caused much confusion for both general and special education. States should have in place policies and procedures to provide guidance to LEAs when they are confronted with questions regarding when children and youth with disabilities may be removed from their placements and to what extent and what type of educational services must be provided.

ADD new sec. 1413(a)(18): "set forth policies and procedures to address instruction in Braille literacy as appropriate for children and youth who are blind or visually impaired, and to ensure that personnel instructing children and youth who use Braille are adequately and appropriately trained in Braille."

RATIONALE: Basic literacy skills are a fundamental part of education. States should ensure that, when it is determined appropriate for individual students, instruction in Braille should be provided. Currently at least half the States have statutes or regulations relating to Braille literacy. Teachers should have access to training, as needed, depending on the level of assistance and instruction individual students may require.

ADD new letter 1413(b); current (b) becomes (c):
"(b) *Optional feature*
Any State which sets forth policies and procedures to ensure that --
(1) at a minimum 98 per centum of the children and youth with disabilities are included in the State assessment program;
(2) the assessment data will be disaggregated;
(3) demonstrable progress is made toward predetermined goals; and
(4) the results are publicly reported
may, notwithstanding any other provisions of this Act, combine funds received under section 1411(c)(2)(B) and section 1431 of this Act with funds distributed under other federal and State programs to support the participation of children and youth with disabilities in State education reform activities."

RATIONALE: Activities mandated under the IDEA should be linked with activities under Goals 2000 and other education reform efforts and should focus on the educational results for children and youth with disabilities. States that participate in reform activities and are able to document performance results for students with disabilities through their State accountability systems should be rewarded for those efforts. This proposed

amendment would allow States more flexibility in combining certain funds under IDEA with funds from other federal programs to support education reform activities for children and youth with disabilities.

ADD new letter (e); current (c) becomes (d); current (d) becomes (f): "The Secretary shall establish procedures for the timely approval of the State plan that are consistent with the requirements of the Cash Management Improvement Act [31 U.S.C. 6501 et seq.], such that --

(1) for the purposes of approval of State Plans required under this Act, the term 'substantially approvable' shall have the meaning given in section 1401 of this Act; and

(2) in no case shall the failure of the Secretary to ensure timely approval of the State plan result in the delay of issuance of funds under this Act to the State."

RATIONALE: The Cash Management Improvement Act (CMIA), which became effective on July 1, 1993, provides for the timely transfer of funds between Federal agencies and States. According to OSEP Memorandum 93-16 (July 21, 1993), "changes in the Department's grant processing procedures limit the circumstances under which the Department will retroactively authorize States to charge against the Part B grant program costs incurred before the Part B State plan is submitted in substantially approvable form."

The implementation of the CMIA has precipitated the need to revamp accounting systems in a number of States, since pre-award costs will no longer be granted. In addition, questions have been raised regarding the definition of "substantially approvable," the standard on which State plan approval will be based. This recommendation and the recommended definition of "substantially approvable" are an attempt to clarify the changes resulting from the implementation of the CMIA.

Sec. 1414. APPLICATION.

1414(a)(1): DELETE subparagraphs (B) through (E). Amend to read "provide satisfactory assurance that payments under this subchapter will be used for excess costs directly attributable to programs which [-- (A)] provide that all children...services[;]."

ADD new sec. 1414(a)(2) and renumber subparagraphs (2) through (7): "provide satisfactory assurance that the local education agency or intermediate educational unit will keep on file the policies and procedures as required by the State for the implementation of this title;"

RATIONALE: Section 1414 is amended as indicated to allow a simpler local application procedure. Since the Act has been in effect for twenty years and programs are well-established, a less cumbersome procedure is appropriate. The language as amended provides a list of assurances that State policies and procedures will be met.

ADD new subparagraph (C) to renumbered sec. 1414(a)(3) and re-letter current subparagraph (C):

(C) allowance shall be made for diminution of State or local funds if the State determines that the decrease in the use of State and local funds in no way reduces the level or quality of services available to children and youth with disabilities in that jurisdiction.

RATIONALE: The current "supplement...and in no case supplant" language in sec. 1414(a)(2)(B)(ii) does not take into account the changing financial obligations of small school districts or changing systems of State funding for special education. For example, a small district has a special educator retire who then is replaced by a recent graduate. The district would be expending less for the latter's services; however, the level and quality of services to the students in that district would not be reduced. Under current law, this district would not meet the "nonsupplanting" and "maintenance of effort" requirements and would lose Part B funds. This proposal would provide needed flexibility in these requirements.

Renumbered sec. 1414(a)(4): Amend to read "provide [for] satisfactory assurance that --

(A) [furnishing] such information...in programs carried out under this subchapter [;] shall be furnished; and

(B) [keeping] such records shall be kept, and [affording] such access shall be afforded...such information furnished under subparagraph (A);"

RATIONALE: *See* "Rationale" for sec. 1414(a)(1) and new sec. 1414(a)(2).

ADD new sec. 1414(b) and re-letter subparagraphs (b) through (f):
(b) *Optional feature*

In States participating under this subparagraph, local educational agencies and intermediate educational units shall provide --
(1) satisfactory assurances that the requirements of subchapter II section 1413(b) are met; and
(2) a description of how funds received under section 1411(c)(2)(B) of this title, and as appropriate funds under section 1431 of this title, will be used in conjunction with other State and federal funds to support the participation of children and youth with disabilities in State education reform activities.

RATIONALE: This language conforms the State plan and local applications. *See* new section 1413(b).

Sec. 1415. PROCEDURAL SAFEGUARDS.

ADD new sec. 1415(b)(2) and renumber current sec. 1415(b)(2) as sec. 1415(b)(3):
"Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for voluntary informal mediation conducted by a impartial third party selected and trained as determined by the State educational agency. For purposes of this paragraph --

(A) attorneys or other independent contractors used to provide legal advocacy services shall not attend or otherwise participate in these proceedings;
(B) these proceedings shall not be considered administrative proceedings;
(C) no award of attorneys' fees and related costs may be made;
(D) nothing shall preclude the parent or public education agency from being accompanied and advised by a nonattorney representative; and
(E) these proceedings shall not be required to be within timelines developed for due process hearings under subparagraph (3).

RATIONALE: Parents should be afforded easy access to a system that guarantees their children the rights and protections provided under the IDEA. However, in many States when a dispute arises, the only forum available to parents is a due process hearing. Therefore, dispute resolution under the Act has become highly adversarial and litigious.

Offering informal mediation as an option and reducing the adversarial tone of the proceeding by barring the presence of attorneys will allow the parties to settle their differences in a spirit of cooperation. Studies show that mediation has been used effectively in a number of States to foster better communication and to reach settlements with minimal emotional stress. The

use of mediation would in no way preclude either party from pursuing a due process hearing.

1415(e)(3): DELETE "(A) Except as provided in subparagraph (B), during." DELETE subparagraph (B). Amend to read "During the pendency of any proceeding conducted pursuant to this section, notwithstanding proceedings referred to in section 1413(a)(17)(G) of this Act, unless the State or local education agency and the parents or guardian otherwise agree or unless the resolution of the controversy is unreasonably protracted by the parents or guardian, the child shall remain in the then current educational placement of such child [,or], [i]If applying for initial admission...proceedings have been completed.

RATIONALE: This change eliminates the language added to this provision under the recent reauthorization of the Elementary and Secondary Education Act. The reference to the proposed section on discipline [*See* section 1413(a)(17) above] would allow an independent hearing officer to intervene to remove a student immediately who was acting in a dangerous manner if the parents did not agree to the student's removal. Currently, under the decision in Honig v. Doe, EHLR 559:231 (U.S. 1988), the school district must petition the court for an injunction to remove the student. This change would allow the school district to neutralize a potentially dangerous situation in a more expeditious manner.

The reference to the "unreasonable protraction of the controversy" is aimed at the elimination of delaying tactics widely used by plaintiffs' attorneys in both administrative and federal court IDEA litigation. The stay-put provision was not intended to extend a placement for two or three years, but rather to allow sufficient time to ensure that the proper placement is found.

1415(e)(4)(F): In clause (ii), delete "or" and insert a semicolon. In clause (iii), delete "." and insert ";or". ADD the following clause:

" (iv) the parent or guardian did not exercise good faith in attempting to resolve the controversy prior to filing a complaint and requesting an impartial due process hearing under this section."

RATIONALE: *See* "Rationale" under new sec. 1415(b)(2). This addition further reinforces the belief that disputes arising under the Act should be settled in the most collaborative manner possible. Reducing attorney's fees if an attempt is not made to settle the dispute outside the courts will encourage the use of mediation or other less costly and adversarial means.

ADD new sec. 1415(f) and re-letter current (f):
"*(f) Other compensation*

A hearing officer or the court may order reimbursement for the costs of a non-public service or placement incurred by the parents or guardian only upon a showing that the parents or guardian have cooperated in good faith with the local educational agency to develop an individualized education program for the child or youth prior to seeking the non-public service or placement."

RATIONALE: Parents or guardians should work cooperatively with school districts to design an appropriate educational program. If the parents or guardian, after such an effort, still feel that a non-public service or placement would best meet the student's needs, then reimbursement may be appropriate.

Sec. 1417. ADMINISTRATION.

ADD new letter (b) and re-letter subparagraphs (b), (c), and (d): "The Secretary shall develop regulations that set forth standards to be used to monitor State systemic compliance under this Act, including goals and objectives related to the stated purposes of the Act as directed under the General Education Provisions Act [20 U.S.C. 1226c]."

RATIONALE: SEAs express serious concerns about current federal monitoring procedures. States have not been provided specific standards to be used in compliance monitoring, and procedures remain inconsistent. States, therefore, remain unsure of what criteria will be used in monitoring.

Currently, there is no reference in the IDEA regarding federal monitoring of SEAs. Adding this provision in the statute will ensure that standards for monitoring will be developed.

Sec. 1418. EVALUATION AND PROGRAM INFORMATION.

DELETE the phrase "by disability category" in each reference in this section.

1418(b)(1)(A)(i) and (ii): To conform with the change in age for the "developmental delay" category (*See* Definitions section), amend to read:

"(i) in age groups [0] birth-2 and 3-8, and
(ii) in age groups 9-11, 12-17, and 18-21 [by disability category]."

1418(b)(1)(D): Amend to read "the number [and type] of personnel that are employed...."

RATIONALE: The amendments in this section are proposed to change the focus from category of disability to range of services provided. As we move to a more inclusive model of education, special education should be viewed as a list of supports and services defined by the individual needs of the student to ensure success in the school environment. A deemphasis on reporting by category of disability will help to drive this reformulation.

Sec. 1419. PRESCHOOL GRANTS.

1419(f)(2): Amend to read "may, [if consistent with State policy,] at the option of the State, use such funds to provide [a free appropriate public education,] services, in accordance with this subchapter, to [2-year-old children...school year] children with disabilities, birth to 5, whether or not such children...subchapter VIII of this chapter."

RATIONALE: Currently there are a number of states using Preschool Grant money in this manner. This amendment would conform statute and practice and allow all States the option to use these funds for children, birth to 5.

Sec. 1421. REGIONAL RESOURCE AND FEDERAL CENTERS.

1421(b) [Considerations governing approval of application]: Add a new sentence at the end of the section -- "The proposals selected shall be determined by a panel, the majority of whom are State directors of special education or their designees."

RATIONALE: The regional resource centers are established to provide technical assistance to SEAs, addressing needs identified by the various States in a particular region. Therefore, it is appropriate that State directors be involved in determining which entities will provide these services.

Sec. 1424. PROGRAMS FOR CHILDREN WITH SEVERE DISABILITIES.

1424(a)(2): Amend to read "the development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of such children and youth with disabilities in general educational environments, classes, and activities with nondisabled peers."

RATIONALE: The addition of this language would refocus the grants to methods that facilitate the integration of children and youth with disabilities into general education. The current language emphasizes improving instructional methods for addressing needs in segregated classes or schools.

1424(a)(3): Amend to read "training of special and [regular] general education, related services, and early intervention personnel and administrators for [programs] services specifically designed for such infants, toddlers, children and youth [including training...peers] in integrated settings with nondisabled peers."

RATIONALE: This amendment would shift the focus to training personnel in delivery of services in integrated or inclusive settings, rather than training targeted to self-contained schools, classes, or programs.

1424(a)(5): Amend to read "statewide projects, in conjunction with the State's plan under subchapter II of this chapter, [to improve the] to change the delivery and quality of special education and related services for children and youth with severe disabilities [and to change the delivery of those services] from segregated to integrated environments."

RATIONALE: The change in wording combines two clauses -- "to improve the quality of services" and "to change delivery of those services" -- into one statement addressing the delivery and quality of services in integrated environments.

Sec. 1424a. **POSTSECONDARY EDUCATION.**

1424a(a)(1): Change references from "specially designed model programs" to "specially designed models of service delivery." Change "such model programs" to "such grants or projects."

COMBINE 1424a(a)(2)(A) and (a)(2)(B): In the current (2)(B), change "programs" to "services addressing the education of individuals with disabilities with nondisabled peers." In (2)(A), replace "programs" with "Developing service delivery models to meet the needs of individuals with disabilities in postsecondary, vocational, technical, continuing or adult education."

Re-letter 1424a(a)(2)(C) as 1424a(a)(2)(B): Amend the current (2)(C) to read "...strengthen efforts in the development, operation, and design of [model programs] service delivery models that are adapted to [the special needs of] meet the needs of individuals with disabilities."

RATIONALE: The change in terminology from "model programs" to "models of service delivery" moves the focus from special education as a place to special education as an array of services designed to meet individual student needs.

Sec. 1425. SECONDARY EDUCATION AND TRANSITIONAL SERVICES.

ADD new sec. 1425(a)(4): Delete "and" at the end of sec. 1425(a)(2); add "and" at the end of sec. 1425(a)(3). ADD new (4): "coordinate the provisions of this Act with the School-to-Work Opportunities Act of 1994 and the Goals 2000: Educate America Act."

RATIONALE: As new laws are enacted, there must be coordination of activities to avoid duplication of effort and to strengthen the existing laws. School-to-Work provides grants for States to develop or enhance apprenticeship and training programs and specifically includes students with disabilities. Goals 2000 addresses the problem of keeping students in school and, through the National Skills Standards Board, will examine the skills students need to successfully transition to meaningful employment. Students with disabilities must be included in and have the advantage of any programs developed in the States. These new programs must be coordinated with transition planning mandated under the IDEA.

1425(b)(5): Amend to read "research and development projects for exemplary service delivery models and the replication and dissemination of successful models, with special attention to the needs of culturally diverse students and students from economically disadvantaged backgrounds."

RATIONALE: The National Longitudinal Transition Study of Special Education Students (NLTS; data collected 1987-1990) indicates that race and ethnicity and economic status are very often predictors of negative results for students with disabilities. There are a higher percentage of culturally diverse and economically disadvantaged students leaving school before graduation. Even for those remaining in school, enrollment in postsecondary programs is less likely, as is participation in competitive long-term employment. Special

emphasis should be placed on improving results for these populations of students with disabilities.

1425(c): Amend to read "For purposes of paragraphs (1) [and], (2), (5), (8), (9), and (11) of subsection (b)...State education agency."

1425(e)(3): Delete "Improve working relationships," and add instead "Coordinate programs." Delete "local Private Industry Councils (PICS) authorized by the Job Training Partnership Act," and add instead "School-to-Work Opportunities Act, Goals 2000: Educate America Act, and JOBS (job opportunities and basic skills programs under the Social Security Act)."

RATIONALE: In order to avoid duplication of efforts, the projects delineated in this section should be coordinated with similar activities conducted by the SEA.

ADD new sec. 1425(e)(3)(E): "Create effective support services especially designed to assist culturally diverse students and students from economically disadvantaged backgrounds to attain successful postsecondary results."

RATIONALE: As stated above [*See* sec. 1425(b)(5)], culturally diverse and economically disadvantaged students fare worse in dropout rate, in participation in postsecondary programs, and in long-term employment.

1425(e)(4)(A)(iii): Delete "improve and increase working relationship," and add instead "coordinate programs." Delete "local Private Industry Councils (PICS) authorized by the JTPA," and add instead "School-to-Work Opportunities Act, Goals 2000: Educate America Act, and JOBS (job opportunities and basic skills programs under the Social Security Act)."

1425(e)(4)(B)(iii): Amend to read "provide incentives...particularly with PICS authorized by the JTPA [and], local branches of State employment agencies, and JOBS (job opportunities and basic skills programs under the Social Security Act)."

RATIONALE: *See* sec. 1425(e)(3) "Rationale" above.

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1425(f)(3)(B)(i): Amend to read "the results of the transition services provided under such subsection, including the [effect of the services regarding] number of students pursuing and the number of students completing postsecondary education, the number of students receiving and the type of job training, and the number of students entering and the type and level of employment, and other appropriate matters."

RATIONALE: It is not enough to know simply that students are receiving transition services. A more accurate measure of those services is reflected in the number of students participating and the level of education and employment attained.

ADD new sec. 1425(f)(3)(B)(vi): "a comparison of results as directed in 1425(f)(3)(B)(i) for culturally diverse and economically disadvantaged students to the overall population served in programs funded under this section."

RATIONALE: *See* sec. 1425(b)(5) "Rationale" above.

ADD new sec. 1425(f)(3)(B)(vii): "a comparison of results as directed in sec. 1425(f)(3)(B)(i) of male and female students to the overall population served in programs funded under this section."

RATIONALE: The NTLS indicates that female students in the general population tend to enroll in higher numbers than their male counterparts in postsecondary school, whereas the reverse is true for students with disabilities. In addition, of those attending postsecondary programs, male students with disabilities are more likely to complete those programs. The comparisons are similar in the area of competitive paid employment. The gender factor, just as racial and economic factors, must be considered in planning and implementing programs.

Sec. 1426. PROGRAMS FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE.

ADD new sec. 1426(c) and re-letter current sec. (c) as (d): "The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies to establish a pilot

regional program designed to meet the needs of children and youth who are deaf and hard of hearing and exhibit behavioral or mental health challenges.

(1) The pilot program established under this section shall provide services, including --

(A) identification and tracking of students using a standardized referral system and case coordination;

(B) evaluation services, including consultation and technical assistance;

(C) crisis intervention, including the establishment of a hotline providing consultation and technical assistance;

(D) development of a Service Delivery Plan, as part of an overall children's mental health plan, including a referral system, case coordination, and program development; and,

(E) personnel preparation, including preservice and inservice components.

(2) At the conclusion of the pilot program, the Secretary shall receive data regarding the efficacy of the program and determine the continuation and possible replication of the program.

RATIONALE: Options for children and youth who are deaf and who also have emotional or mental health disabilities are extremely limited. Because of the extremely low incidence of this population and the intensity and complexity of their needs, the Act as written has not met the challenges of these children. Specifically, special education programs are often not available, and there has been no federal financial support for efforts undertaken by State and local educational agencies. This pilot program would begin to address these unmet needs.

Sec. 1431. GRANTS FOR PERSONNEL TRAINING.

1431(a)(2)(A): Amend to read "The Secretary shall base the award of grants under paragraph (1) on [information relating to the present and projected need] demonstrable State and regional needs determined by the States and in conformity with its comprehensive system of personnel development as directed in sec. 1413 of this Act for special education, related services, early intervention, and other personnel to be trained based on identified State, regional, or national shortages calculated by methods prescribed by the Secretary, including a priority on preparation of personnel to serve children and youth with disabilities from low incidence populations, the need for personnel....Secretary."

RATIONALE: National personnel shortages should be addressed after careful study of State and regional needs. Further, the number of programs training personnel to serve children and youth from low incidence disabilities has declined, leaving certain areas of the country unable to find adequate staff.

1431(a)(4): Amend to read "The Secretary in carrying out paragraph (1) shall reserve a sum not to exceed 5 percent of the amount available for paragraph (1) in each fiscal year for [contracts] grants to State educational agencies to award stipends or other innovative incentives based on criteria determined by the State in consultation with local educational agencies to prepare personnel...grant process."

RATIONALE: State and local educational agencies are best able to determine personnel needs in their particular area. Therefore, when such a need is identified and has not been met through the regular grant process, that need should be communicated to the Secretary and grants under the section should be made available to the States.

1431(a)(5): Amend to read "In making grants under subsection (a)(1)...and shall be designed to assist special educators in properly coordinating service provision with related services and general education personnel...."

RATIONALE: As a more collaborative and integrated model of service delivery develops, special and general educators cannot be trained in isolation. Interdisciplinary training for special and general educators, as well as related services personnel, allows professionals to focus on common goals for all students and to utilize the expertise of each member of the educational team.

1431(d)(1): Amend to read "The Secretary shall fund up to 5 grants to States or entities...for the purpose of providing opportunities for [career advancement and/or competency-based training] human resource management training and continuing education...." **ADD new sentence** after first sentence in paragraph (1): "The human resource management system will include early recruitment, induction, mentoring, and continuing education components and should be coordinated with the regional resource and Federal centers funded under sec. 1421 of this Act."

1431(d)(1)(B), (C) and (D)(3): In both sections, delete "career development" and insert "human resource development and continuing education."

1431(d)(1)(D): Delete "workers" and insert "high quality personnel."

RATIONALE: Education should adopt the human resource management model used successfully in modern business and industry to develop a cadre of quality personnel. Under that model, human resource management is integrated with the overall quality and operational performance of the business. The goals of human resource management, therefore, are to create high-performance work teams, offer opportunities for continuing education, broaden employee responsibilities and encourage creativity, and ensure a supply of well-prepared employees for the future.

This model's goals are synonymous with those of a quality educational system. The educational system must determine (1) the related education and training needs for all employees; (2) mechanisms for promoting cooperation and collaboration; (3) a plan for empowering employees to contribute to their maximum potential; and, (4) a means of recognizing those contributions.

ADD new sec. 1431(e)(4)(E): "be coordinated with parental information and resource centers funded under Title IV of Goals 2000: Educate America Act [20 U.S.C. 5911]."

RATIONALE: Entities receiving grants under Goals 2000 to establish parental information and resource centers must assure that they will network with the parent centers mandated under the IDEA. Adding coordinating language in the IDEA reinforces the need for collaboration and cooperation.

1431(e)(11)(A): Amend to read "the number of parents provided information and training [by disability category of their children], including disaggregation of data on the percentage and number of culturally diverse families served."

RATIONALE: While there is an overrepresentation of culturally diverse children and youth in special education programs, their families have historically been underserved. This additional data requirement will provide a snapshot of services being provided and areas where services need to be improved and increased.

Sec. 1432. GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS FOR TRAINEESHIPS.

1432(a): Amend to read "The Secretary shall make a grant of sufficient size and scope to each State educational agency for the purposes described in [DELETE REMAINDER OF SENTENCE] sec. 1431(a)(3) of this title and based on the approval of the State plan required under this Act."

RATIONALE: Grants authorized under this section should be tied to the needs identified in the State plan.

DELETE 1432(b) and (c).

RE-LETTER 1432(d) as 1432(b): Amend to read "The Secretary is authorized to provide directly or by grant, contract, or cooperative agreement, technical assistance and training to State education agencies on matters pertaining to the effective implementation of [section 1413(a)(3) of this title] this Act."

RATIONALE: This change would expand technical assistance under this part beyond just the comprehensive system of personnel development to include all of the IDEA, as well as education reform activities.

Sec. 1433. CLEARINGHOUSES.

ADD new sec. 1433(d)(6) and (d)(7):

"(6) Collect and disseminate information on successful practices for the recruitment, retention, and mentoring of personnel.

(7) Collect and disseminate successful practices for support to first-year teachers and for teachers reentering the profession."

RATIONALE: These additions are particularly crucial for a system faced with large shortages. States should have the benefit of knowing what works in other places regarding recruitment and retention of staff. In addition, the literature shows that new teachers and those reentering the field are considered "at risk" and leave the profession in higher numbers unless they are given adequate support.

Sec. 1434. REPORTS TO THE SECRETARY.

1434(a)(1) and (a)(2): Delete "category" and insert "kind." After "kind of training" insert "(special education, general education, related services, and other.)"

RATIONALE: These changes move the focus of reporting from a disability category orientation to a focus on training individuals who can provide a broad range of support services, depending on the individual needs of the student.

Sec. 1441. RESEARCH AND DEMONSTRATION PROJECTS IN EDUCATION OF [HANDICAPPED] CHILDREN AND YOUTH WITH DISABILITIES.

1441(b): Amend to read "In carrying out subsection (a) of this section, the Secretary shall consider the special education, related services, or early intervention and research experience of applicants [.] to identified children and youth with disabilities in general education or community environments."

RATIONALE: Applicants should be conversant with and have experience in dealing with children and youth with disabilities in the broad range of settings. As more students are integrated into general education, the focus should move to advancing the knowledge base on how best to serve students in that setting.

AMENDMENTS TO OTHER ACTS

Improving America's Schools Act of 1994:

Sec. 1114(a)(4)(A): DELETE the parenthetical phrase -- "other than formula or discretionary grant programs under the Individuals with Disabilities Education Act."

RATIONALE: This deletion would allow local school districts, at their discretion, to use IDEA funds in schools participating in schoolwide programs. Research shows that students with mild to moderate learning disabilities often benefit from and learn best under similar conditions as those students who most often receive help under schoolwide programs. This flexible use of funds would benefit both populations.

GENERAL RECOMMENDATIONS:

1. Advocate for full funding of the IDEA.

2. All references in the Act to "regula. education" should be changed to read "general education."

3. Change references to "child(ren)" to "child(ren) and youth."

4. Delete references to "disability category" throughout the Act.

5. All references to "0-2" should read "birth-2."

6. Where reference is made in the IDEA to provisions of other federal acts, comparable language should be included in those acts cross-referencing the IDEA.

7. The triennial reevaluation should be reexamined during the regulatory process. Regulations should reflect that the triennial reevaluation should not be a repetition of the eligibility process. Such repetitive testing should not be undertaken unless specifically requested by parents or teachers. Instead, a more thorough evaluation should be conducted at natural transition points in the educational process.

8. The protection and advocacy system (P & A) should be redesigned and moved to one independent act.
   a. The mandate should extend beyond advocacy for individuals with developmental disabilities;
   b. Funding should be centralized into this protection and advocacy act;
   c. P & A should not be eligible for attorneys' fees; and,
   d. P & A should report regarding the poor and culturally diverse families they serve.

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement (OERI)
Educational Resources Information Center (ERIC)

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